

1 JUDGE WALTER S. SMITH, JR.
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

BRANDON BERNARD,) Crim. No. **W-99-CR-070(2)**
Defendant-Movant,) (Civ. Action No. W-04-CV-163)
vs.)
UNITED STATES OF AMERICA,) NOTICE
Plaintiff-Respondent.) OF INTENT TO FILE A REPLY TO
) THE GOVERNMENT'S RESPONSE
) TO MOTION TO ALTER OR AMEND
) JUDGMENT
)
)

Undersigned counsel for Brandon Bernard respectfully give the Court and the Government notice that they intend to file a reply to the Government's response to Mr. Bernard's Motion to Alter or Amend Judgment under Fed. R. Civ. P. 59(e) (Dkt. 452).

The local civil rules, appropriately applied here because Mr. Bernard's pending motion arises under the Federal Rules of Civil Procedure, provide that "[a] party may file a reply in support of a motion" within seven days from the filing of the opponent's response. L.R. CV-7(f)(1), (f)(2).

At the same time, the local rules state that "[t]he court need not wait for a reply before ruling on a motion." Local R. CV-7(f)(2).

While the local rules give the Court the discretion to rule on Mr. Bernard's pending Rule 59(e) motion without waiting for him to reply to the Government's

1 response, Mr. Bernard respectfully hopes that the Court will defer action until he has had
2 the opportunity to reply. Given the factual and legal complexity of this case, a reply from
3 Mr. Bernard will assist the Court in reliably resolving the issues before it.

4 This proceeding under 28 U.S.C. § 2255 constitutes a vital safeguard to ensure
5 that Mr. Bernard will not suffer death unless his rights were fully protected at trial. The
6 serious questions presented cannot be reliably resolved without a full presentation of the
7 issues, and such a full presentation will only be available if the moving party has an
8 opportunity to reply.

9 Dated this 7th day of December, 2012.

10 Respectfully submitted,

12 /s Robert C. Owen

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2012, I electronically filed the foregoing Notice of Intent to File a Reply to the Government's Response to Motion to Alter or Amend Judgment with the Clerk of the Court using the CM/ECF system which will send notification of filing to Assistant United States Attorney Mark Frazier.

s/ Amy Strickling,
Amy Strickling, Paralegal
Federal Public Defender Office

NOTICE OF INTENT TO FILE REPLY - 3
(*Brandon Bernard v. United States; W-99-CR-070(2)*)

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